

January 8, 1998

MEMORANDUM TO: Distribution

FROM: Michael J. Rubino, Associate Director
Acquisition Services Branch

SUBJECT: Policy Memorandum No. 98-001
Extent of Subcontracting

1. Purpose. The purpose of Policy Memorandum No. 98-001 is to modify the Acquisition Policy Manual (APM) to establish policies and procedures for determining the extent of subcontracting allowable under FDIC contracts.
2. Reference. APM 6.H.3.a., *Extent of Subcontracting*, Page 6-53.
APM 6.H.5., *Approval of Subcontracts*, Page 6-55.
3. Scope. This Policy Memorandum applies to all Contracting Officers and other Acquisition Services Branch (ASB) personnel involved with processing procurement actions.
4. Background.

APM 6.H. establishes policies and procedures for subcontracting under FDIC contracts, including but not limited to subcontractor markups, eligibility, competition, and approval. These policies and procedures are reflected in various clauses in the Request for Proposal (RFP) and Standard Contract documents

APM 6.H.3.a. states that the decision to allow subcontracting is made by the Program Office in consultation with the Contracting Officer. When subcontracting is deemed necessary, the Contracting Officer shall include the standard RFP clause, entitled "Subcontracting," in the solicitation. This clause notifies offerors that subcontracting will be permitted. It also states that the "contractor may not subcontract all, or substantially all, of the work under the contract."

The APM does not define or specify any limits on the amount of subcontracting which should be allowable or may be appropriate for a given contract. Therefore, there is a need to clarify this matter to ensure a consistent approach by Contracting Officers in the future.

5. APM Changes. The APM is changed to provide guidelines for controlling the appropriate level (extent) of subcontracting under FDIC contracts. Therefore, in accordance with the foregoing, APM 6.H.3. is modified to add the following provisions:

“6.H.3.g. Guidelines for Determining the Level of Subcontracting.

(1) Once the decision to allow subcontracting has been made (see APM 6.E.3.a.), the Contracting Officer, in consultation with the Program Office, must determine the allowable level of subcontracting (i.e., how much of the work may be subcontracted). The primary concern involves the level of control necessary for the contractor to thoroughly monitor subcontractor performance. This will vary from contract to contract and must be examined during proposal evaluation through review of the prime contractor’s subcontracting plan, and during performance when new subcontractors are proposed.

(2) In order to determine the allowable level of subcontracting under FDIC contracts, the Contracting Officer and Program Office should jointly consider the following guidelines:

(a) The proposed level of subcontracting should be appropriate for the requirements of the contract (i.e., logically balanced on a technical basis);

(b) The subcontractor’s qualifications, resources and capabilities must be appropriate for the complexity of the work;

(c) The proposed level of subcontracting must be commensurate with industry practices for similar requirements;

(d) The complexity or critical nature of the subcontracting must be balanced with the appropriate level of on-going supervision by the contractor;

(e) The prime contractor must demonstrate experience in supervising and performing control and quality assurance of the subcontractor’s work;

(f) The prime contractor should propose a detailed and complete subcontract plan, clearly indicating oversight and control throughout the contract;

(g) The prime contractor must clearly have full responsibility for the inspection and acceptance of all subcontractors' work;

(h) The contract type must clearly place risk of performance with the contractor; and

(i) The work required of the subcontractor involves the provision of commercial goods and/or services.

If the majority of these guidelines are fully addressed, then this may indicate reduced subcontracting risks and that a higher percentage of subcontracting may be allowable under these circumstances. However, if most of these guidelines cannot be fully addressed, significant subcontracting risks may exist and a lower level of subcontracting may be appropriate.

6.H.3.h. Subcontracting Level Threshold.

(1) Pre-Award Approval. Except for construction contracts, prime contractors shall not be allowed to subcontract more than 75% of the work under a contract without prior approval from the Associate Director, ASB. For purposes of this pre-award approval, the Contracting Officer shall use the subcontracting percentage stated in the contractor's subcontracting plan.

(2) Approval of New/Existing Subcontracts. The 75% threshold stated in paragraph (1) above, as well as the other procedures stated herein, shall apply to new subcontracts proposed for Contracting Officer approval during contract performance. Contractors shall be required to revise their existing Subcontracting Plans accordingly. (See APM 6.H.3.i. below). Note: Associate Director approval is also required if, following award, a new subcontract increases the total subcontracting percentage above the 75% threshold. Furthermore, if Associate Director approval has previously been obtained on the contract, further subcontracting following the award will also require Associate Director approval.

6.H.3.i. Subcontracting Level Approval. The Contracting Officer's execution of a contract will constitute written approval of the proposed level of subcontracting (as represented in the contractor's subcontracting plan). The decision to approve new subcontracting during contract performance shall be made in writing by the Contracting Officer in accordance with the procedures stated in APM 6.H.3.h. The Contracting Officer shall provide written approval to the prime contractor and the subcontractor shall not be allowed to begin work until such approval is granted.

6.H.3.j. Documentation. For awards exceeding the 75% subcontracting level threshold stated in APM 6.H.3.h., the Contracting Officer shall document the decision regarding the approved level of subcontracting in the Selection Recommendation Report. The documentation shall address the nine (9) factors set forth in APM 6.H.3.g.(2). In addition, the Contracting Officer's decision to approve any new subcontracts during contract performance that exceed the 75% threshold shall also require Associate Director approval. This decision must also be documented based on the factors in APM 6.H.3.g.(2)."

6. Effective Date. This Policy Memorandum is effective immediately.
7. Contacts. If you have any questions, please contact David McDermott on (202) 942-3434.

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